

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement • • Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

December 3, 1984

William P. McNames
Deputy City Attorney
City of Garden Grove
11391 Acacia Parkway
Garden Grove, CA 92640

Re: Advice Letter No. A-84-276

Dear Mr. McNames:

This is in response to your letter of October 26, 1984, regarding the possibility of a conflict of interest by two city councilmembers of the City of Garden Grove relating to the Kaiser Foundation Hospital project.

FACTS

The Kaiser Foundation wishes to build a 7-story, 400-bed hospital in the City of Garden Grove on a site now utilized for growing strawberries. The development project is currently being considered by the City Council. There is a question concerning a possible conflict of interest on the part of two councilmembers who will be voting on the proposal.^{1/}

City Councilman Littrell and his family are members of Kaiser Foundation Health Plan, Inc. This membership is an insurance contract which entitles them to medical benefits. Membership in the Health Plan does not confer voting rights, a financial interest, ownership interest, or management decisionmaking powers in the Kaiser Foundation. There are approximately 10,000 other Kaiser members in Garden Grove.

^{1/} You have also requested advice regarding Councilmember Williams. However, since you submitted this request Councilmember Williams' term has ended and your request on his behalf is now moot. See, attached newspaper article, furnished by your office, for additional background on the project.

Mayor Cannon has attempted to purchase a parcel of land approximately one-half block away from the proposed Kaiser development site. The parcel is outside of the development area. The Mayor currently has no option for the purchase of the property, no written agreement to purchase the parcel, and no legal interest in the land at all.

QUESTION PRESENTED

Should Councilman Littrell and Mayor Cannon disqualify themselves or may they participate in the decisionmaking process concerning the construction of a Kaiser Foundation Hospital in the City of Garden Grove?

CONCLUSION

Councilman Littrell has no conflict of interest and may participate in the decisionmaking process concerning the Kaiser Foundation development project.

Mayor Cannon may participate in the decisionmaking process regarding the Kaiser Foundation Hospital. However, if he does acquire any interest in the property, he may have to disqualify himself.

DISCUSSION

Government Code Section 87100^{1/} states that no public official shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000).

(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000).

^{1/} All statutory references are to the Government Code unless otherwise specified.

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103.

The nature of Councilman Littrell's relationship with Kaiser Foundation is that of a subscriber to a service. The participants in the Health Plan receive medical treatment under the terms and restrictions of an insurance policy. The Kaiser program is available to individuals throughout California. The operation and control of the program is not performed by the individual subscribers, but by internal management employees of the Kaiser Foundation. Councilman Littrell's membership in Kaiser is not an investment in a business entity, an interest in real property, a source of income, or an employment position as defined by the Political Reform Act. Thus Councilman Littrell's interest in the program is not one which would establish a basis for a conflict of interest and prohibit him from participating as a Councilmember.

Mayor Cannon's current position does not create the basis for a conflict of interest under the Political Reform Act. The facts indicate that Mayor Cannon has not purchased or otherwise acquired any interest in the parcel. Thus, as defined by Section 82033, he does not have an "interest in real property."

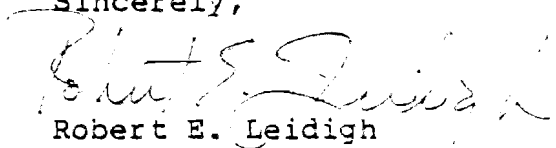
"Interest in real property" includes any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official . . . or his or her immediate family if the fair market value of the interest is greater than one thousand dollars (\$1,000)....

William P. McNames
December 3, 1984
Page 4

As long as Mayor Cannon does not obtain an interest in the parcel before the end of the City Council's consideration of the Kaiser development project, there is no conflict.^{2/}

If you have any further questions, or if I can be of any additional assistance, please feel free to contact me at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh

^{2/} If Mayor Cannon should agree to purchase the property or acquire an option thereto during the City Council's consideration of the development project, our advice may change. If this occurs we strongly suggest that you contact us immediately for further advice.

GG Council delays Kaiser ruling until next Tuesday— maybe

By Lee Peterson
Staff Writer

GARDEN GROVE — With more than 600 people in attendance, a decision on the controversial Kaiser Hospital project was delayed yet another week at Monday night's city council meeting.

After the clouds of conflict of interest formed over Mayor John Cannon, the council decided, after almost two hours of discussion, to begin the public hearing Monday and continue it until next Tuesday, Oct. 30, delaying any vote on the project.

City planners earlier recommended disapproval of the project by a 6-1 vote. If the council disagrees with the planning commission, then the matter is returned to the planners, who then review the project and send it back to the council either approving or disapproving the project.

As the seven-hour meeting Monday proceeded, the crowd dwindled away, during what was largely a struggle between councilmembers and various traffic engineers. While at times the discussion turned into a seminar on methods of traffic engineering, officials grappled over the crux of the neighboring citizen's complaints: increased traffic flow.

The environmental impact report on the Kaiser project shows an enormous increase in traffic mainly along Euclid and Chapman. The total project, centered around a 400-bed hospital, would create an estimated 12,000 more vehicular trips per day.

Kaiser opponents arguments point out the potential traffic, congestion, pollution and safety problems. They also point out the deficit created by Kaiser's tax-exempt status, as well as possible relocation to another site.

Proponents' arguments center around the creation of 3,000 jobs, the foundation's need for a new facility, and the benefit of a modern medical center to the community.

Prior to Monday's meeting, opposing sides gathered their forces. Kaiser by sending notices to its Garden Grove members and the group opposing the project by circulating petitions.

The matter was nearly entirely postponed due to the discovery at 7 p.m. of Cannon's potential investment in a piece of property less than one-half mile from the project site which was, according to City Attorney Eric Lauterer, probably a conflict of interest.

Because Cannon's realtor is negotiating for the property near the Euclid Street and Chapman Avenue intersection, Lauterer said an opinion should be obtained from the state Fair Political Practices Commission.

Lauterer says a conflict may exist because the property is for a business venture and not residential purposes.

Any participation by Cannon, Lauterer said, might "taint" the hearing. If the FPPC found a conflict of interest, a new hearing would be necessitated and Cannon could be held personally liable.

Upon a suggestion from Councilman Ray Littrell, Cannon relinquished the chair and did not ask any questions or participate in the public hearing Monday.

Pending a telephoned decision from the FPPC, Cannon intends to ask his questions concerning the project next week, at the continuation.

Cannon, an attorney himself, argued his potential investment in the piece of property was no more a conflict of interest than Vice Mayor J. Tilman Williams living on Chapman Ave., almost directly across from the project site.

But in Williams' case, a written FPPC decision was obtained one year ago finding no conflict of interest. Lauterer said he reconfirmed this finding by telephone Monday afternoon.

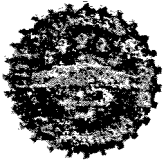
Also, no conflict of interest was found by the FPPC in the case of Littrell, who is a Kaiser Health Plan subscriber. Since he does not stand to gain financially from the project, Lauterer said the laws allowed him to participate and vote.

As the 29th is the fifth Monday, it is scheduled for a closed work session. So the Kaiser hearing will be continued in a special session, Tuesday, Oct. 30.

While the city planning staff's presentation was essentially unchanged from the one given at the planning commission session three weeks ago, the Kaiser contingent gave a more prepared and exhaustive presentation than before the planners.

Arthur Kassan, a senior traffic engineer retained by Kaiser, presented his estimates that show the project, along with \$1.6 million in Kaiser-financed street improvements, would create no more traffic congestion than remaining at the status quo — no project and no improvements. John Bedard, a spokesman for the neighborhood group opposing the project, said Kassan's projections were "absolutely incredible... ludicrous."

Unless the project is denied at Tuesday's council session, consideration of the project will likely continue until after the Nov. 6 election, when at least one and as many as three council seats may change hands.



CITY OF GARDEN GROVE, CALIFORNIA

11391 ACACIA PARKWAY, GARDEN GROVE, CALIFORNIA 92640

OFFICE OF THE CITY ATTORNEY
(714) 638-6881

October 26, 1984

Fair Political Practices Commission
P. O. Box 807
Sacramento, CA. 95804

Attention: Robert Leidigh

RE: Kaiser Hospital -
Possible Conflicts of Interest

Dear Mr. Leidigh:

Pursuant to our telephone conversation of this date regarding possibility of conflict of interest by various City Council members of the City of Garden Grove relating to a hospital project to be constructed by Kaiser Foundation within the corporate limits of the City of Garden Grove, a brief recap of the facts discussed are as follows:

There exists a project for the development of a multi-story hospital in the City of Garden Grove by the Kaiser Foundation. Presently before the City Council is consideration of the development project for the hospital. Arising from inquiries presented by various individuals, three areas have been questioned as being a source of possible conflict of interest on the part of three respective councilmembers before whom the project must be submitted for approval.

Prior to this point in time and based, in part, upon discussion by the City Attorney, Eric Lauterer, and yourself and in part based upon legal research performed by City Attorney Lauterer, the enclosed letter and opinion have been issued with respect to two of the possible conflict sources. These opinions are referred to you for your review, consideration and response.

The facts of the two circumstances are set forth accurately in the letter opinions. The third councilmanic position, subject of inquiry, is that held by Vice-Mayor, Tilman Willians, who owns a single family residence, occupied by himself and his family, such property being within approximately one-half block of the proposed hospital site. Enclosed is a Memo to File that was prepared by City Attorney, Eric Lauterer, which sets forth his legal analysis of the interest held.

Robert Leidigh
FPPC

Page Two

10/26/84

Also included is the newspaper article containing reference to your office of which you inquired.


Based upon the facts as presented in the letter opinions and our discussion of this date, I hereby request that you advise in writing as soon as possible, the position of the Fair Political Practices Commission with regard to: (1) the possible conflict of interest as to each of the councilmanic members and the Mayor with respect to the project; and (2) the recommended course of action for each with regard to the participation in or making of a decision and determination with respect to the project.

This is a request of extreme urgency inasmuch as the matter is to be before the City Council for further hearing and possible determination on Tuesday, October 30, 1984, at 7:00 pm.

If it is possible to provide written advisement prior to that time, it would be greatly appreciated; and request in the absence of that possibility, a telephone communication.

Respectfully,

ERIC LAUTERER
City Attorney


By: WILLIAM P. McNAMES
Deputy City Attorney

WPM:mes
Encls.

CITY ATTORNEY'S OPINION
CITY OF GARDEN GROVE

September 30, 1983

Opinion #83-7

TO: Honorable Mayor and City Council

FROM: Eric Lauterer, City Attorney

SUBJECT: Conflict of Interest Opinion Request from Councilman
 Raymond Littrell - Enrollment of City Council Member in Kaiser
 Foundation Health Plan, Inc.

BACKGROUND

City Councilman Raymond Littrell has inquired as to whether or not he might have a conflict of interest based on the following facts:

Councilman Littrell and his family are part of a program by virtue of the fact that his employment initially gave him participatory rights and he and his family have continued in the program subject to the regulations of the policy provided and rights and restrictions related thereto. As one entitled to benefits under the medical program provided by Kaiser Foundation Health Plan, Inc., Mr. Littrell has no voting rights, no financial interest, no ownership in the organization and no management decision capability in terms of the operation of said facility. Kaiser Foundation Health Plan, Inc., is a medical program with physical buildings located at different locations within the State of California and is in the present process of hoping to develop a physical structure to treat individuals under the plan at or near the intersection of Euclid Street and Chapman Avenue in the City of Garden Grove.

QUESTION

Would a conflict of interest exist of the nature prohibited by law, should Councilman Littrell participate in any decision-making matters that come before the Garden Grove City Council or the Garden Grove Agency for Community Development related to the construction of a Kaiser Foundation medical facility within the City of Garden Grove?

ANSWER

Based on the facts stated above, Councilman Littrell has no conflict of interest that would prohibit him from participating in decision-making matters brought before the City or Agency in connection with the building of the Kaiser Foundation medical facility in the City of Garden Grove.

interest of the type that would prohibit him from participating in or the making of any governmental decision related to the establishing of a Kaiser Foundation medical facility within the City of Garden Grove. The Kaiser program is one available to individuals throughout the State of California and the participants in the program do so for the purpose of receiving medical treatment and benefits subject to the terms of a policy entered into by individuals and the Kaiser Foundation Health Plan, Inc. The operation of the Kaiser program is not controlled by individuals who sign up for the program but rather by an internal management process within which the participants in the program have no financial or ownership interest.

Based on the preceding, it appears there is no basis to prohibit Councilman Littrell's participation in the Kaiser Foundation Health Plan, Inc., program and no conflict of interest of the type prohibited by law under provisions of Section 87100 or 87103 of the Government Code.

Respectfully submitted

A handwritten signature in cursive script, appearing to read "Eric", written in dark ink.

ERIC LAUTERER
City Attorney

EL:mes
0573G



CITY OF GARDEN GROVE, CALIFORNIA

11391 ACACIA PARKWAY, GARDEN GROVE, CALIFORNIA 92640

OFFICE OF THE CITY ATTORNEY
(714) 638-6881

October 24, 1984

Honorable Mayor and City Council
City of Garden Grove
California

RE: Kaiser Hospital - PUD 102-83 & EIR related thereto.
Inquiry regarding Conflict of Interest - Mayor Cannon

Gentlemen:

Following the lengthy Council meeting which commenced on Monday, October 22nd, concerning the above captioned matter, I had an opportunity to telephone and speak to the Fair Political Practices legal representative in the area of potential conflict of interest.

You will recall the question was raised by the fact that the Mayor had indicated he was in the process of attempting to acquire a parcel of land approximately one-half to one block away from the Kaiser Hospital site. I am advised the parcel is outside the redevelopment project area. Factually, the Mayor has no option on the property, has no written agreement to acquire the property and has no legal interest in any portion of the parcel under any conditions.

Negotiations for the parcel were to be on a willing-seller basis and if and when the parties could agree, the parcel would be acquired by the Mayor. To date, no acquisition of any interest as to the parcel has been acquired nor has any right in the parcel been obtained by the Mayor.

I advised the Mayor and the Fair Political Practices' legal counsel concurs, that he should not acquire any interest in the property of any nature whatsoever prior to the completion of the present pending hearing dealing with the Kaiser Hospital if he is to participate in said hearing. To date you will recall the Mayor, on my advice, has not participated in the hearing process but has sat and listened. Subject to the above conditions, he may participate


Honorable Mayor and City Council
Page Two

10/24/84

in the continued hearing process including chairing the hearing and questioning and addressing all matters of evidence both written and oral.

Based on existing statutory provisions regarding conflict of interest under the Fair Political Practices Act, Mayor Cannon has committed no violation thereof under the circumstances described herein.

Respectfully,



ERIC LAUTERER
City Attorney

EL:mes

During the same telephone conversation I discussed the question of the residential property of one of the other members of the Council, which property was acquired approximately 7 years ago and is within one-half block of the Kaiser site. We discussed the issues under Section 87103 which described financial interest and it is clear there is financial interest of at least \$1000 under (b) thereof. The next question is whether that is distinguishable from the effect on the general public, should the project go in. It appears from here that the 125,000 citizens in the community, with testimony from several hundred people and petitions and cards to that effect to the City Council, will be impacted by the project in a negative fashion . The matter is a factual one being based on the number of individuals in opposition, it appears the public generally will be affected by the hospital because of the number of vehicle trips it will generate not just within the immediate neighborhood but all around the streets near Chapman and Euclid which will serve as feeders to the hospital facility.